A

JOSHUA NARENDRAN KULWAT v. DEVA RAJ SUNDRAM & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN J
[CIVIL SUIT NO: WA-21NCvC-36-03-2022]
27 OCTOBER 2025

B

Abstract – *For a power of attorney to be irrevocable under s. 6 of the Powers of Attorney Act 1949, it must be given for valuable consideration. While 'love and affection' may sometimes be cited in a domestic context, it cannot constitute valuable consideration where the relationship is proven to be fractured and characterised by abuse and neglect. In such circumstances, the 'antithesis of love' renders the consideration non-existent and the power of attorney revocable or void.*

C

D

LAND LAW: *Transfer – Transfer of property – Forgery – Claim by administrator of estate of deceased against fraudster – Fraudster transferred half share of property to himself by way of power of attorney purportedly signed by the deceased while she was hospitalised weeks before her death – Allegation that signature on power of attorney forged – Validity of power of attorney executed while donor hospitalised – Whether donor had physical and mental capacity to execute power of attorney – Whether signature forged – Whether power of attorney valid and irrevocable – National Land Code, s. 340(2)(b) – Powers of Attorney Act 1949, s. 6*

E

EVIDENCE: *Adverse inference – Failure to call material witness – Claim by administrator of estate of deceased against fraudster – Fraudster transferred half share of property to himself by way of power of attorney purportedly signed by deceased before Commissioner for Oaths – Failure to call Commissioner for Oaths to testify – Whether fatal – Whether adverse inference ought to be drawn – Evidence Act 1950, s. 114(g)*

F

G

EVIDENCE: *Similar fact evidence – Admissibility – Claim by administrator of estate of deceased against fraudster – Fraudster transferred half share of property to himself by way of power of attorney – Allegation by fraudster that power of attorney executed valid and irrevocable as it was given for valuable consideration – Love and affection between husband and wife – Whether police reports documenting pattern of domestic violence and attempts to force transfer of property supported notion of love and affection – Whether relevant to show intent and pattern of conduct – Evidence Act 1950, s. 15*

H

CONTRACT: *Consideration – Power of Attorney – Irrevocability – Love and affection – Claim by administrator of estate of deceased against fraudster – Fraudster transferred half share of property to himself by way of power of attorney purportedly signed by deceased while she was hospitalised weeks before her death – Allegation by fraudster that power of attorney executed valid and irrevocable as it was given for valuable consideration – Whether love and affection established – Powers of Attorney Act 1949, s. 6*

I

The plaintiff's mother ('deceased') married the first defendant in 1997 when the plaintiff was 12 years old. According to the plaintiff: (i) between 2010 and 2015, the deceased had lodged five police reports against the first defendant for domestic violence and his persistent attempts to force the deceased to transfer her property to him; (ii) on 23 June 2018, the deceased was admitted to the hospital and remained hospitalised until 28 July 2018. The deceased was bedridden and required full nursing care; (iii) the first defendant produced a power of attorney ('POA') purportedly dated and executed on 11 July 2018 while the deceased was hospitalised. This POA was registered at the High Court approximately three hours after the deceased's demise; and (iv) using the POA, the first defendant proceeded to transfer the deceased's half share in the property to himself. Hence, the present claim by the plaintiff, in his capacity as the administrator of the estate of the deceased, against the first defendant. In support of his claim, the plaintiff averred that (i) the signature of the deceased on the POA was forged by the first defendant; (ii) the deceased never left the hospital on 11 July 2018 and, in fact, lacked the physical and mental capacity to execute any documents on the said date; (iii) the POA was invalid and defective; and (iv) the transfer of the property was fraudulent, pursuant to s. 340(2)(b) of the National Land Code ('NLC'). The first defendant argued that: (i) the signature on the POA was genuinely the deceased's and was not forged by him. On 11 July 2018, the first defendant took her out of the hospital in a wheelchair, brought her to a restaurant where she signed the POA before the Commissioner for Oaths; (ii) the POA was valid and irrevocable as it was given for valuable consideration, namely love and affection between husband and wife; and (iii) the plaintiff was estopped from bringing this claim as the plaintiff and the first defendant had entered into a settlement agreement where the property was to be excluded from the list of assets of the deceased's estate.

Held (allowing claim):

(1) There was overwhelming and uncontroverted evidence that concluded that the deceased was in no state to sign the POA on 11 July 2018. The doctor on duty, who attended to the deceased on 11 July 2018, testified that: (i) the deceased was bedridden and unable to care for herself; (ii) there was no record of the deceased leaving the hospital on 11 July 2018; (iii) there was no discharge record or permission given for the deceased to leave the hospital on 11 July 2018; and (iv) it was not possible for the deceased to have been taken out of the hospital in a wheelchair on 11 July 2018. (paras 12 & 20)

(2) The first defendant's testimony, regarding taking the deceased out of the hospital was vague, inconsistent and wholly unconvincing. The notion that the first defendant could single-handedly lift the deceased into a wheelchair, transport her out of the hospital without any hospital staff

noticing or recording the departure, bring her to a restaurant while drafting legal documents and then return her to the hospital undetected – all during lunch hours – was highly improbable and inconsistent with the medical evidence. (paras 31 & 34)

(3) Despite the entire case revolving around whether the deceased genuinely signed the POA before a Commissioner for Oaths, the first defendant did not subpoena or produce him as a witness. The Commissioner for Oaths was not merely a material witness; he was the only witness who could have independently verified whether the deceased appeared before him and signed the POA. The first defendant's failure to call the Commissioner for Oaths as a witness was fatal to his case. The circumstances overwhelmingly called for an adverse inference to be drawn against the first defendant. (paras 14, 48 & 51)

(4) The POA was registered at the High Court three hours after the deceased passed away. A person acting in good faith, having lawfully obtained a valid POA, would not typically rush to register it within hours of the donor's death. The haste with which the POA was registered suggested an awareness of its questionable validity and a desire to formalise it before questions could be raised. (paras 53 & 55)

(5) The handwriting expert ('PW2') examined the questioned signatures on the POA and compared them with specimen signatures. While PW2's report did not conclusively find forgery, the documented differences in signatures, when evaluated cumulatively with the medical evidence and the first defendant's failure to call the material witnesses, contributed significantly to the finding of forgery. (paras 37 & 42)

(6) The deceased had lodged five police reports between 2010 and 2015, documenting a pattern of conduct by the first defendant attempting to force/compel her to transfer the property to him over many years. Section 15 of the Evidence Act 1950 provides that when there is a question whether an act was accidental or intentional, the fact that the act formed part of a series of similar occurrences was relevant. The police reports constituted admissible similar fact evidence that was logically probative of the first defendant's intent and pattern of conduct regarding the property. This evidence supported the inference that the first defendant forged the deceased's signature on the POA when the opportunity presented itself during her final hospitalisation. (paras 56, 57 & 62)

(7) There was no binding settlement agreement between the parties. Even if there were negotiations towards settlement, the plaintiff was not estopped from pursuing this claim given the fundamental allegation of forgery and fraud. (para 69)

(8) The POA lacked the necessary valuable consideration to be irrevocable under s. 6 of the Powers of Attorney Act 1949. Fundamentally, there was no love and affection between the deceased and the first defendant that could constitute consideration. The relationship was characterised by abuse, coercion, abandonment and neglect – the antithesis of love and affection. (paras 84 & 85)

(9) The POA was invalid, null and void. The transfer of ownership from the deceased to the first defendant was, therefore, invalid, null and void. The first defendant was ordered to pay to the plaintiff: (i) the sum of RM3,000 per month as rental value of the property from 9 July 2019 until the date of transfer back to the estate was completed; and (ii) exemplary damages in the sum of RM42,000. (para 102)

Case(s) referred to:

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case [1995] 3 CLJ 639 CA ***(refd)***

Bell v. The Midland Railway Company [1861] 1 B & S 850 ***(refd)***

Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 FC ***(refd)***

Jaafar Shaari & Anor v. Tan Lip Eng & Anor [1997] 4 CLJ 509 SC ***(refd)***

Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors [2009] 5 CLJ 1 CA ***(refd)***

Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd [2017] 5 CLJ 418 FC ***(refd)***

Mahmood Ooyub v. Li Chee Loong & Other Appeals [2020] CLJU 660; [2020] 1 LNS 660 CA ***(refd)***

Mood Music Publishing Co Ltd v. De Wolfe Publishing Ltd [1976] Ch 119 ***(refd)***

Puncak Alam Housing Sdn Bhd v. Menta Construction Sdn Bhd & Anor [2013] CLJU 148; [2013] 1 LNS 148 CA ***(refd)***

Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd [2015] 7 CLJ 584 FC ***(refd)***

Teoh Kiang Hong v. Theow Say Kow & Other Appeals [2025] 2 CLJ 683 FC ***(refd)***

United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 15, 114(g)
National Land Code, s. 340(2)(b), (3)
Powers of Attorney Act 1949, s. 6

For the plaintiff - Vijay Edward; M/s Kumar Thangaraju & Co
For the 1st defendant - R Thayakugan & Leong Zheng Yang; M/s Othman Hashim & Co

Reported by Najib Tamby

JUDGMENT

Roz Mawar Rozain J:

[1] This is a claim by the plaintiff, in his capacity as administrator of the estate of his late mother, Rachel Alcantara a/p Peter Alcantara (the deceased), against the first defendant, who was the deceased's husband and the plaintiff's stepfather.

[2] The plaintiff's case centres on the allegations that the first defendant fraudulently forged the signature of the deceased on a power of attorney dated 11 July 2018 and subsequently used that power of attorney to transfer the deceased's ½ share in the property known as 44, Lorong Setiajasa 1, Bukit Damansara, 50490 Kuala Lumpur, Grant No 23188, Lot 48810, Mukim Kuala Lumpur (the Damansara property) to himself.

[3] On 15 July 2022, this court allowed the fourth defendant's application to strike out the plaintiff's suit against it. So, the fourth defendant is no longer a part of this proceeding.

[4] Throughout the trial, the plaintiff did not adduce any claims and evidence against the second and the third defendants. Therefore, there is no determination against them.

The Plaintiff's Case

[5] The plaintiff's case, as pleaded and adduced in evidence, may be summarised as follows:

(i) the deceased married the first defendant on 22 February 1997 when the plaintiff was 12 years old. The deceased passed away on 15 August 2018 at 11.10 am at Hospital Kuala Lumpur;

(ii) between 2010 and 2015, the deceased had lodged five police reports against the first defendant dated 29 November 2010, 24 July 2012, 30 August 2012, 14 April 2014, and 14 July 2015. These police reports detailed domestic violence and the first defendant's persistent attempts to force the deceased to sign documents to transfer the Damansara property to him;

(iii) on 23 June 2018, the deceased was admitted to Hospital Kuala Lumpur and remained hospitalised continuously until 28 July 2018. During this hospitalisation, she was diagnosed with meningoencephalitis, grade II sacral sore (bedsores), ESBL klebsiella urinary tract infection, and vascular dementia with BPSD. The deceased was bedridden and required full nursing care;

(iv) the first defendant produced a power of attorney purportedly dated and executed on 11 July 2018, while the deceased was hospitalised. This power of attorney was registered at the Kuala Lumpur High Court under Registration No: WA-SKW-32-08/2018 on 15 August 2018 at 2.19 pm, approximately three hours after the deceased's demise at 11.10 am on the same day; and

(v) using this power of attorney, the first defendant proceeded to transfer the deceased's 14 share in the Damansara property to himself on 11 January 2019 at 10.17 am.

[6] The plaintiff contends that:

(i) the signature of the deceased on the power of attorney was forged by the first defendant;

(ii) the deceased never left Hospital Kuala Lumpur on 11 July 2018;

(iii) the deceased lacked the physical and mental capacity to execute any document on 11 July 2018;

(iv) the power of attorney is invalid and defective; and

(v) the transfer of the property was fraudulent pursuant to s. 340(2)(b) of the National Land Code 1965.

The Defence

[7] The first defendant's defence, in brief, is as follows:

(i) the first defendant asserts that the signature on the power of attorney was genuinely signed by the deceased in front of the Commissioner for Oaths, Samugam Vassoo. He claims that on 11 July 2018, he took the deceased out of the hospital in a wheelchair, brought her to a restaurant in Bangsar, where she signed the power of attorney before the Commissioner for Oaths.

(ii) the first defendant contends that the power of attorney was valid and irrevocable as it was given for valuable consideration, namely love and affection between husband and wife;

(iii) the first defendant further pleads that the plaintiff and the first defendant had entered into a settlement agreement in the probate proceedings (BA-31NCvC-900-12/2018) whereby the Damansara property was to be excluded from the list of assets of the deceased's estate, and therefore the plaintiff is estopped from bringing this claim; and

(iv) The first defendant denies forging the deceased's signature and maintains that the transfer of the property was lawful and valid.

The Trial

[8] The trial was conducted over two days. It laid bare the strained relationship of two men – once bound by the love they have for the deceased, fighting for the property each claims is their rightful inheritance.

[9] The plaintiff testified about his mother's hospitalisation, her medical condition, the police reports he had lodged against the first defendant, and his discovery of the allegedly forged power of attorney. He maintained throughout his testimony that his mother could not have left the hospital on 11 July 2018 and was not in a condition to sign any documents.

[10] The plaintiff called PW2, a chemist from the Department of Chemistry Malaysia. She examined the questioned signatures on the power of attorney and compared them with specimen signatures. Her report noted differences in handwriting characteristics between the questioned signatures and the specimen signatures. During cross-examination, she acknowledged that signatures may vary over time and if the signatory was sick with a trembling hand, though her report documented distinct differences in the signatures examined.

[11] The plaintiff's maternal aunt, the deceased's sister took the witness stand as PW3. She testified about the deceased's relationship with the first defendant, the history of domestic abuse, and the deceased's medical condition. She confirmed the deceased's hospitalisation and her bedridden state.

[12] PW4 is a specialist physician. She is a specialist in general medicine at Hospital Kuala Lumpur with 22 years of medical experience and eight years as a specialist. She was authorised by the Director of Hospital Kuala Lumpur, Dato' Dr Harikrishna, to give evidence on behalf of the hospital. She testified that:

(i) she was the doctor on duty who attended to the deceased on 11 July 2018;

(ii) the deceased was diagnosed with meningoencephalitis, sacral sore (bedsores), ESBL klebsiella urinary tract infection, and vascular dementia with BPSD;

(iii) the deceased was bedridden and unable to care for herself;

(iv) there was no record of the deceased leaving the hospital on 11 July 2018;

(v) there was no discharge record or permission given for the deceased to leave the hospital on 11 July 2018; and

(vi) it was not possible for the deceased to have been taken out of the hospital in a wheelchair on 11 July 2018.

[13] The defendant testified that he took the deceased out of the hospital on 11 July 2018 in a wheelchair to a 'mamak' shop in Bangsar where she signed the power of attorney before the Commissioner for Oaths, Samugam Vassoo. However, his evidence was vague and inconsistent. Under cross-examination, he repeatedly used phrases like "would have" when describing events, admitted he could not remember details, and acknowledged that he was aware of the deceased's medical conditions including dementia and meningoencephalitis.

[14] Significantly, the first defendant failed to call two critical witnesses:

(i) Commissioner for Oaths Samugam Vassoo. Despite the entire case revolving around whether the deceased genuinely signed the power of attorney before this Commissioner, the first defendant did not subpoena or produce him as a witness. The first defendant's counsel admitted in court that the subpoena was only served *via* WhatsApp and was not properly served; and

(ii) Dr Kam Siao Yen. Although Dr Kam signed the medical report, the evidence established that he was not the attending physician. PW4 – Dr Marina Taufik, testified that Dr Kam merely signed the report but did not treat the deceased. Nevertheless, the failure to call the maker of the medical report is noteworthy.

Assessment Of The Evidence

[15] The key issues for determination are:

(i) whether the deceased's signature on the power of attorney was forged;

(ii) whether the deceased had the capacity to execute the power of attorney;

(iii) whether there was a binding settlement agreement; and

(iv) the appropriate reliefs and remedies.

The Burden And Standard Of Proof

[16] It is trite law that in civil cases involving allegations of fraud and forgery, the burden of proof lies on the party making the allegation, and the standard of proof is on the balance of probabilities. This principle has been definitively settled by the Federal Court in *Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd* [2015] 7 CLJ 584; [2015] 5 MLJ, where it was held that even for fraud in civil claims, the standard of proof is on the balance of probabilities, not beyond a reasonable doubt.

[17] The Federal Court in *Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418; [2017] 4 MLJ 697 reiterated that the onus of proof of any particular fact lies on the party who alleges it. In civil cases, the onus of proving the genuineness of a deed is cast upon the party who produces it and asserts its validity.

[18] This principle was most recently affirmed by the Federal Court in *Teoh Kiang Hong v. Theow Say Kow & Other Appeals* [2025] 2 CLJ 683; [2025] 1 MLJ 813, where the apex court clarified that when forgery is alleged, the party alleging forgery bears the onus of proving, on the balance of probabilities, that the signature was forged.

[19] In the present case, the plaintiff bears the burden of proving, on the balance of probabilities, that the deceased's signature on the power of attorney dated 11 July 2018 was forged by the first defendant.

The Deceased's Ability To Sign The Power Of Attorney On 11 July 2018

[20] This is the critical issue in this case. This court assesses the medical evidence where it finds that there is overwhelming and uncontroverted evidence that concludes the deceased was in no state to sign the power of attorney on 11 July 2018.

[21] In arriving at this conclusion, evidence that she was admitted to Hospital Kuala Lumpur on 23 June 2018 and remained hospitalised continuously until 28 July 2018, is regarded. The first defendant admitted to this fact.

[22] According to the medical report and the testimony of PW4, the deceased was diagnosed with:

(i) meningoencephalitis: A serious brain infection causing inflammation of the brain and surrounding membranes, characterised by confusion, reduced consciousness, seizures, and potential coma;

(ii) vascular dementia with BPSD: A condition affecting cognitive function and behaviour;

(iii) grade II sacral sore (bedsores): Indicating the deceased was bedridden and immobile; and

(iv) ESBL klebsiella urinary tract infection: A bacterial infection.

[23] PW4's testimony was clear, authoritative, and unshaken during cross-examination. She categorically stated that:

(i) the deceased was under her care on 11 July 2018;

(ii) the deceased never left the hospital on 11 July 2018;

(iii) there was no discharge record for 11 July 2018;

(iv) there was no permission given for anyone to take the deceased out of the hospital; and

(v) it was not possible for the deceased to have been taken out in a wheelchair on 11 July 2018.

[24] In her own words "ini tidak terjadi, kerana sepanjang waktu sejak masuk ke wad sehingga discaj pada 28hb Julai, dia berada di hospital di dalam wad sepanjang masa. Kita tak benarkan keluar sehingga kita discaj".

[25] What is pertinent is the evidence of the deceased's physical state – PW4 testified that the deceased was not able to walk even to the bathroom. PW4's evidence is that "dia sejak masuk ke wad, dia dalam keadaan terbaring. Dia tak dapat berjalan ke tandas dan sebagainya dan dia memerlukan ... memerlukan pertolongan untuk penjagaan dirinya".

[26] In her explanation that the defendant could not be wheeled away on a wheelchair was because "tapi di dalam wad, dia terlantar. Dia tidak boleh duduk di wheelchair". A

[27] I find PW4 to be a credible and truthful witness. She was properly authorised by the Director of Hospital Kuala Lumpur to give evidence on behalf of the hospital. Her testimony was based on her direct knowledge as the attending physician on the material date. The first defendant did not challenge her authority or her testimony during the cross-examination in any meaningful way. B

[28] The first defendant himself, during cross-examination, admitted his awareness of the deceased's medical condition, specifically mentioning dementia and meningoencephalitis. This boosted the medical facts testified to by PW4. C

[29] The hospital records and medical report show no discharge or absence from the hospital on 11 July 2018. The deceased remained in the ward continuously from 23 June 2018 until her discharge on 28 July 2018. This documentary evidence corroborates PW4's testimony. D

[30] If the deceased had indeed been taken out of the hospital as claimed by the first defendant, there would necessarily be some record or notation of such an event. The complete absence of any such record strongly militates against the first defendant's version of events. E

[31] This court finds the first defendant's testimony regarding taking the deceased out of the hospital to be vague, inconsistent, and wholly unconvincing. F

[32] The first defendant claimed he lifted the deceased from her hospital bed into a wheelchair and took her to a 'mamak' shop in Bangsar. However, his testimony lacked credibility for several reasons. The first is that he repeatedly used conditional language such as "would have" when describing allegedly actual events, even after being corrected by this court. This suggests uncertainty or fabrication rather than recollection of actual events. G

[33] Second, he could not remember basic details about this allegedly significant event, including how he transported the deceased back to the hospital, the exact location of the 'mamak' shop, or specific details of the wheelchair transfer. When pressed on these details, his responses were evasive. H

[34] Third, the physical logistics of his claimed actions are highly improbable. According to the undisputed medical evidence, the deceased was bedridden with sacral sores, suffering from brain inflammation and dementia, and requiring full nursing care. The notion that the first defendant I

could single-handedly lift her into a wheelchair, transport her out of the hospital without any hospital staff noticing or recording the departure, bring her to Bangsar, kept her at a 'mamak' shop while drafting legal documents, and then return her to the hospital undetected, all during lunch hour, is highly improbable and inconsistent with the medical evidence.

[35] Fourth and most significantly, the first defendant's account is directly contradicted by PW4's categorical testimony that the deceased never left the hospital on 11 July 2018 and that there was no record of any such departure.

[36] Hence, this court finds that the first defendant has failed to provide credible evidence that he took the deceased out of the hospital on 11 July 2018.

The Power of Attorney

[37] PW2, the handwriting expert from the Department of Chemistry Malaysia, examined the questioned signatures on the power of attorney and compared them with specimen signatures. Her report noted "some differences" in handwriting characteristics between the questioned signatures and the specimen signatures.

[38] The first defendant argues that the expert's report was inconclusive and that PW2 herself acknowledged that signatures may vary over time and if the signatory was sick.

[39] While it is true that the expert did not make a conclusive finding of forgery, this does not assist the first defendant. As held by the Supreme Court in *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31; [1993] 1 MLJ 182, forgery is a question of fact for the trial court to determine after considering the credibility of witnesses and any expert evidence. The trial judge is not entitled to abdicate his function by allowing the expert to determine the question.

[40] Moreover, as stated in *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61, expert opinion evidence is admissible and need not be corroborated. The expert's testimony about the differences in the signatures, when considered together with all the other evidence, contributes to the overall picture of the case.

[41] The significance of the handwriting evidence lies not in any conclusive finding of forgery by the expert, but in the documented differences in the signatures, which must be evaluated in the context of all the evidence. Given that the deceased was suffering from meningoencephalitis and vascular dementia, which would have affected her motor control and cognitive function, and given that PW4 testified the deceased never left the hospital, the differences in the signatures take on greater significance.

[42] While PW2's report did not conclusively find forgery, the documented differences in signatures, when evaluated cumulatively with the medical evidence and the first defendant's failure to call material witness(es), contribute significantly to the finding of forgery. See *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639; [1995] 2 MLJ 770.

[43] The attestation clause on the power of attorney reveals a fundamental defect that cannot be overlooked. The attestation by the Commissioner for Oaths Samugam Vassoo states: "for according to information given to me by trust-worthy and respectable persons, namely Deva Raj Sundram (NRIC 610802-08-5519) of which information I verily believe, the true signature of Deva Raj Sundram".

[44] This attestation clause is fatally flawed. A Commissioner for Oaths attesting to a power of attorney must attest that he witnessed the donor's signature (in this case, Rachel Alcantara – the deceased), not the donee's signature. The entire purpose of the Commissioner for Oath's attestation is to verify that the donor appeared before him and signed the document.

[45] Instead, the attestation clause explicitly states that the Commissioner for Oaths witnessed "the true signature of Deva Raj Sundram" – the donee, not the donor. This is a fundamental defect that renders the attestation meaningless for its intended purpose of verifying the deceased's signature.

[46] Moreover, the attestation clause states that the Commissioner for Oaths acted "according to information given to me by trust-worthy and respectable persons, namely Deva Raj Sundram". This indicates that the Commissioner for Oaths did not personally witness the deceased signing but relied on the information provided by the first defendant himself – the very person who benefited from the power of attorney.

[47] A proper attestation should unequivocally state that the Commissioner for Oaths witnessed the donor (the deceased) signing the document in his presence. The failure to do so raises serious questions about whether the deceased ever appeared before the Commissioner for Oaths at all.

[48] The first defendant's failure to call the Commissioner for Oaths as a witness is fatal to his case. The entire defence rests on the proposition that the deceased appeared before the Commissioner for Oaths and signed the power of attorney in his presence. The Commissioner for Oaths is the only independent witness who could have corroborated the first defendant's version of events.

[49] During the trial, the first defendant's counsel admitted that attempts to subpoena the Commissioner for Oaths were inadequate, stating that service was only attempted *via* WhatsApp. No affidavit of service was filed, and no proper service was effected.

[50] Section 114(g) of the Evidence Act 1950 provides that this court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The principle of adverse inference for failure to call material witnesses is well-established. In *Jaafar Shaari & Anor v. Tan Lip Eng & Anor* [1997] 4 CLJ 509; [1997] 3 MLJ 693, the Supreme Court held that an adverse inference ought to be drawn for the failure to call important witnesses when the circumstances appropriately call for such an adverse inference.

[51] In the present case, the circumstances overwhelmingly call for an adverse inference to be drawn against the first defendant. The Commissioner for Oaths is not merely a material witness – he is the only witness who could have independently verified whether the deceased appeared before him and signed the power of attorney. His absence from the witness box is highly significant.

[52] This court draws an adverse inference against the first defendant for his failure to call a Commissioner for Oaths. This court finds that if the Commissioner for Oaths had been called to testify, his evidence would have been unfavourable to the first defendant and would have confirmed that the deceased never appeared before him.

[53] An additional circumstantial fact that supports the plaintiff's case is that the power of attorney was registered at the Kuala Lumpur High Court at 2.19pm on 15 August 2018, approximately three hours after the deceased passed away at 11.10am on the same day.

[54] During the cross-examination, the plaintiff could not recall when he informed the first defendant of the deceased's death. While this does not conclusively prove that the first defendant knew of the death before registering the power of attorney, the timing is suspicious and adds to the cumulative weight of evidence against the first defendant.

[55] A person acting in good faith, having lawfully obtained a valid power of attorney, would not typically rush to register it within hours of the donor's death. The haste with which the power of attorney was registered suggests an awareness of its questionable validity and a desire to formalise it before questions could be raised.

Deceased's Relationship With The First Defendant

[56] There is evidence of some semblance of a fractured relationship between the deceased and the first defendant. The deceased had lodged five police reports between 2010 and 2015, documenting a pattern of conduct by the first defendant:

(i) 29 November 2010: the first defendant forced the deceased to sign a will and transfer all her property to him;

(ii) 24 July 2012: domestic abuse and threats to chase the deceased out of the property;

(iii) 30 August 2012: being chased out of the property;

(iv) 14 April 2014: abusive behaviour; and

(v) 14 July 2015: The first defendant was trying to force the deceased to sign documents relating to the property and threatening her.

[57] The admissibility of similar fact evidence in civil cases is governed by s. 15 of the Evidence Act 1950, which provides that when there is a question whether an act was accidental or intentional, the fact that the act formed part of a series of similar occurrences is relevant.

[58] As held by the Court of Appeal in *Mahmood Ooyub v. Li Chee Loong & Other Appeals* [2020] CLJU 660; [2020] 1 LNS 660; [2020] 6 MLJ 755, citing *Mood Music Publishing Co Ltd v. De Wolfe Publishing Ltd* [1976] Ch 119 from the English Court of Appeal:

> In civil cases the courts will admit evidence of similar facts if it is logically probative, that is, if it is logically relevant in determining the matter which is in issue: provided that it is not oppressive or unfair to the other side and also that the other side has fair notice of it and is able to deal with it.

[59] The police reports establish a clear pattern of the first defendant attempting to force/compel the deceased to transfer the property to him over many years. This pattern is logically relevant in determining whether the alleged signature on the power of attorney dated 11 July 2018 was genuine or forged.

[60] The similarities are striking. The first defendant had been trying to obtain the property since 2010 through various means including threats, abuse, and attempts to make the deceased sign documents. When those attempts failed, a power of attorney suddenly materialises in 2018 when the deceased was hospitalised, seriously ill, bedridden, and unable to resist or even be aware of her surroundings.

[61] The first defendant did not challenge the contents of any of these police reports, nor did he lodge any counter-reports disputing the deceased's allegations when he became aware of them through the writ and statement of claim filed and served on him by the plaintiff. His silence in the face of these serious allegations is telling.

[62] This court finds that the police reports constitute admissible similar fact of evidence that is logically probative of the first defendant's intent and pattern of conduct regarding the Damansara property. This evidence

supports the inference that the first defendant forged the deceased's signature on the power of attorney when the opportunity presented itself during her final hospitalisation.

The Settlement Agreement

[63] The first defendant pleads that the plaintiff and the first defendant entered into a settlement agreement in the probate proceedings whereby the Damansara property was to be excluded from the estate, and therefore the plaintiff is estopped from bringing this claim.

[64] During the cross-examination, the first defendant was asked directly whether he signed a settlement agreement with the plaintiff as signatory. He answered in the negative. This admission is fatal to the defence of settlement and estoppel.

[65] The plaintiff was referred to a letter dated 21 March 2019 from his then - solicitors Messrs NK Mila to the second defendant (the law firm). The plaintiff confirmed that he instructed that the letter to be sent. However, the plaintiff explained that he never agreed to relinquish his rights to his mother's 14 shares, but rather was proposing terms for settlement that were never formalised.

[66] A settlement agreement requires mutual agreement and, typically, formal execution. The first defendant himself admitted there was no signed settlement agreement between the parties. At best, some discussions and proposals were never finalised.

[67] Even assuming discussions occurred, no concluded agreement was established. The first defendant's own admission that no signed settlement agreement existed is fatal to this defence.

[68] Moreover, even if there had been a settlement, such a settlement would be voidable if procured through fraud. As held by the Court of Appeal in *Puncak Alam Housing Sdn Bhd v. Menta Construction Sdn Bhd & Anor* [2013] CLJU 148; [2013] 1 LNS 148; [2014] 1 MLJ 287, a settlement agreement cannot be used to shield fraudulent conduct. If the power of attorney was indeed forged, any settlement discussions premised on its validity would be tainted by that fraud.

[69] This court finds that there was no binding settlement agreement between the parties, and even if there were negotiations toward settlement, the plaintiff is not estopped from pursuing this claim given the fundamental allegation of forgery and fraud.

Lack Of Consideration

[70] Other matters taken into account by this court includes s. 6 of the Powers of Attorney Act 1949 provides that a power of attorney can only be irrevocable if it is given "for valuable consideration" and is expressly stated to be irrevocable in the instrument.

[71] The power of attorney in question does not state that it is irrevocable. During the cross-examination, the first defendant was specifically asked about valuable consideration and confirmed that there was no consideration stated in the power of attorney. The first defendant attempted to argue that "love and affection" between husband and wife constitutes valuable consideration. However, the power of attorney makes no mention of love and affection as consideration.

[72] The transfer Form (14A) refers to "balasan kasih sayang" (love and affection), but this appears in a document prepared by the first defendant after the purported execution of the power of attorney, not in the power of attorney itself.

[73] Even if love and affection could constitute consideration in appropriate circumstances, there is cogent and undisputed evidence before this court that not only did love and affection not exist between the deceased and the first defendant at the material time, but that the first defendant had completely abandoned the deceased when she became medically incapacitated.

[74] The deceased was forced to leave the Damansara property due to the first defendant's abuse. PW1 testified that the first defendant "chased her out of the Damansara house" and that "she was told to get out of the house over several occasions". She lived alone in rented apartments struggling with severe health problems.

[75] When the deceased became seriously ill and required nursing care, it was PW1 (her son), who arranged and paid for her placement in nursing homes, first at St Mary's and then at Mentalink. The first defendant contributed nothing financially.

[76] PW1 testified unequivocally: "the defendant did not pay a single cent towards her medication, towards her hospitalisation nor her upkeep nor her rental and everything else subsequently even past the funeral". This evidence was not challenged by the first defendant.

[77] When the deceased was in the nursing home, the first defendant never visited her. When the care at Mentalink proved inadequate, PW1 had to rescue his mother to take her to a hospital. PW1 personally arranged for the deceased's daily needs, including paying an eatery on a weekly basis to

provide her food, taking her to the pharmacy for medications, and ensuring she had everything she needed. The first defendant provided none of this care or support.

[78] The most revealing aspect is when the deceased was admitted to Hospital Kuala Lumpur from 23 June 2018 to 28 July 2018 – a period of more than one month during which she was gravely ill with meningoencephalitis, dementia, and bedsores – the first defendant had not visited her.

[79] Even at the deceased's funeral, the first defendant attended only the memorial service but did not attend the cremation at Cheras Crematorium, showing a lack of respect even in death, or rather the love and affection.

[80] This is not a picture of love and affection. This is a picture of complete abandonment. The first defendant left his gravely ill wife to fend for herself, forced her out of the marital home, contributed nothing to her care, never visited her during her final illness, and allowed her son to bear the entire burden – financial and emotional – of caring for her.

[81] The evidence reveals a significant contradiction. The first defendant claims "love and affection" justified the power of attorney, yet he showed no love or affection when the deceased desperately needed care. He was absent during her suffering but suddenly appeared with a power of attorney – purportedly executed while she lay bedridden in hospital on 11 July 2018, a date when PW4 testified categorically that the deceased never left the hospital.

[82] The police reports document years of abuse, threats, and coercion from 2010 to 2015. PW3 testified about the deceased being in an abusive relationship with the first defendant. PW1 described his mother as suffering from what "would be called as a Stockholm syndrome where that she would leave and then she will be coaxed or persuaded to come back and things will be back to normal for a while. And then again, the abuse starts all over again".

[83] When considered against the totality of the evidence – the history of abuse documented in police reports, the pattern of domestic violence, the first defendant's complete abandonment of the deceased during her final illness, his failure to contribute financially or emotionally to her care, and his absence from her hospital bedside during her month-long final hospitalisation – the claim that this power of attorney was executed out of "love and affection" is not merely unsupported by the evidence. It is contradicted by every fact in this case.

[84] This court finds that the power of attorney lacks the necessary valuable consideration to be irrevocable under s. 6 of the Powers of Attorney Act 1949. More fundamentally, this court finds that there was no love and affection between the deceased and the first defendant that could constitute consideration.

[85] The police reports are admissible under s. 15 of the Evidence Act 1950 as similar fact evidence, being logically probative of the first defendant's intent and pattern of conduct. The relationship was characterised by abuse, coercion, abandonment, and neglect – the antithesis of love and affection.

Conclusion

[86] Having carefully considered all the evidence, both oral and documentary, and having assessed the credibility of the witnesses, this court is satisfied that the plaintiff has proven, on the balance of probabilities, that the deceased's signature on the power of attorney dated 11 July 2018 was forged by the first defendant.

[87] This court's findings are based on the cumulative considerations of the evidence iterated above. Each of these factors, standing alone, would raise serious doubts about the genuineness of the power of attorney. Taken together cumulatively, they establish forgery on the balance of probabilities.

[88] The principle established in *Teoh Kiang Hong v. Theow Say Kow & Other Appeals* (*supra*) is instructive. The Federal Court emphasised that the burden of proving forgery lies with the party alleging it, and that the burden must be discharged on the balance of probabilities. However, once a *prima facie* case is established, the evidential burden shifts to the party asserting the document's validity.

[89] In the present case, this court finds that the plaintiff has established a *prima facie* case of forgery. The evidential burden then shifted to the first defendant to prove that the deceased did indeed sign the power of attorney. The first defendant has comprehensively failed to discharge that burden. His evidence was unconvincing, he failed to call crucial witnesses, and his version of events is contradicted by credible medical evidence.

[90] In summary, this court makes the following findings of fact:

(i) the deceased did not sign the power of attorney dated 11 July 2018;

(ii) the deceased never left Hospital Kuala Lumpur on 11 July 2018;

(iii) the deceased lacked the physical and mental capacity to execute any document on 11 July 2018 due to her severe medical conditions including meningoencephalitis, vascular dementia, bedsores, and urinary tract infection;

(iv) the first defendant forged the deceased's signature on the power of attorney dated 11 July 2018;

(v) the attestation by Commissioner for Oaths Samugam Vassoo is defective and does not properly attest to the deceased's signature;

(vi) the power of attorney dated 11 July 2018 is invalid, null, and void;

(vii) there was no binding settlement agreement between the plaintiff and the first defendant that would estop the plaintiff from bringing this claim; and

(viii) the transfer of the deceased's ½ share in the Damansara property to the first defendant was fraudulent and illegal.

Section 340 National Land Code

[91] Section 340(2)(b) of the National Land Code (NLC) provides:

> The title of any person under a registry title to land or to any interest in land which has been obtained by forgery or fraud has been obtained from a person purporting to be the proprietor but who in fact had no title to the land or interest shall be void as against any person deprived of any land or interest through the forgery, fraud or misdescription.

[92] Section 340(3) of the NLC empowers this court to declare void any instrument or dealing obtained through fraud or forgery and to make such consequential orders as it thinks fit to give effect to its declaration.

[93] Here, the power of attorney was obtained through forgery. The subsequent transfer of the deceased's ½ share in the Damansara property to the first defendant, being based on the forged power of attorney, was fraudulently obtained. This falls squarely within s. 340(2)(b).

[94] The plaintiff, as the administrator of the deceased's estate and as a beneficiary under the deceased's will, has been deprived of the deceased's ½ share in the Damansara property through the first defendant's forgery and fraud.

[95] Pursuant to s. 340(3) NLC, this court has the power to declare the power of attorney and the subsequent transfer void, and to make consequential orders to restore the property to the estate.

[96] The plaintiff has proven that the first defendant fraudulently transferred the deceased's property and has been in possession and control of the Damansara property since January 2019. The plaintiff has further established that the Damansara property has been rented out for RM5,000 per month to a Mr Collin Benedict Lourdes. The plaintiff conservatively claims rental of RM3,000 per month from 9 July 2019 (the date of transfer) until full payment and settlement.

[97] Exemplary damages are appropriate in cases where the conduct of the wrongdoer has been outrageous, involving malice, fraud, cruelty, or insolence. As stated in the authorities cited, the purpose of exemplary damages is to punish the wrongdoer. See *Bell v. The Midland Railway Company* [1861] 1 B & S 850; 121 ER 978.

[98] This court rules that the first defendant's conduct warrants exemplary damages. He forged his dying wife's signature while she lay bedridden and suffering in the hospital. He then rushed to register the forged document within hours of her death. His conduct displayed fraud, cruelty, and a calculated scheme to deprive the deceased's son of his inheritance. The police reports establish that this was the culmination of years of abuse and attempts to coerce the deceased into transferring her property.

[99] The first defendant's conduct involves fraud, calculated deception, and cruelty towards a vulnerable, bedridden person. This egregious conduct, involving forgery during the deceased's final hospitalisation followed by immediate registration after her death, warrants punishment through exemplary damages.

[100] The plaintiff claims exemplary damages assessed at 20% of the rental collected, amounting to RM42,000. This is a reasonable and modest claim given the egregious nature of the first defendant's conduct. This court allows this claim for exemplary damages. See *Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors* [2009] 5 CLJ 1; [2009] 4 MLJ 610.

[101] Judgment is accordingly entered in favour of the plaintiff against the first defendant.

This Court's Orders

[102] The following are the orders of this court:

(i) it is hereby declared that the power of attorney dated 11 July 2018, registered at the High Court of Malaya in Kuala Lumpur under Registration No: WA-SKW-32-08/2018 on 15 August 2018, is invalid, null, and void;

(ii) it is hereby declared that the transfer of ownership of the 14 share in the property known as 44, Lorong Setiajasa 1, Bukit Damansara, 50490 Kuala Lumpur, Grant No 23188, Lot 48810, Mukim Kuala Lumpur, from Rachel Alcantara a/p Peter Alcantara (the deceased) to the first defendant (*vide* Form 14A) is invalid, null, and void;

(iii) the Registrar of the High Court of Kuala Lumpur is hereby ordered and directed to sign the transfer of ownership form (Form 14A) for the 14 share in the said property from the name of the first defendant back to the estate of Rachel Alcantara a/p Peter Alcantara or as the plaintiff, being the administrator, directs;

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(iv) the first defendant shall pay to the plaintiff the sum of RM3,000 per month as rental value of the Damansara property from 9 July 2019 until the date of transfer back to the estate is completed;

(v) the first defendant shall pay to the plaintiff exemplary damages in the sum of RM42,000;

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(vi) interest at the rate of 5% per annum on the rental sum (O. 4 above) from 9 July 2019 until full settlement;

(vii) the first defendant shall pay the plaintiff's costs of this civil suit in the sum of RM50,000, subject to allocator; and

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(viii) liberty is given to the plaintiff to apply for further directions or consequential orders as may be necessary to give effect to this judgment.

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